

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**A.J. KELLY,**

**Defendant.**

**CASE NO. 8:08CR247**

# MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's appeal (Filing No. 55) from the Magistrate Judge's order (Filing No. 54) denying the Defendant's motion to continue trial. The Court has considered the supporting brief (Filing No. 56).

Pursuant to 28 U.S.C. § 636(b)(1)(A) and NECrImR 57.2, the court has reviewed the order from which this appeal has been taken. In an appeal from a magistrate judge's order on a pretrial matter within 28 U.S.C. § 636(b)(1)(A), a district court may set aside any part of the magistrate judge's order shown to be clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); NECrImR 57.2(c).

The Defendant argues that Judge Gossett abused his discretion in denying the requested continuance. In denying the Defendant's motion, Judge Gossett stated that he considered the following factors: the age of the case; previously granted continuances; the record as a whole; and the motion's content. The appeal is denied, as this Court concludes that Judge Gossett's order was not clearly erroneous or contrary to law.

IT IS ORDERED:

1. The Defendant's appeal from the Magistrate Judge's order (Filing No. 55) is denied; and
2. The Magistrate Judge's order (Filing No. 54) is affirmed.

DATED this 7<sup>th</sup> day of August, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge